

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MERCHANTS BANK OF INDIANA)

Plaintiff,)

vs.)

SPROUT MORTGAGE, LLC,)

Defendant.)

Civil Action No.: _____

COMPLAINT

Merchants Bank of Indiana (“Merchants”), for its Complaint against Sprout Mortgage, LLC (“Sprout”), alleges as follows:

Nature of the Action

1. This action addresses Sprout’s breach of contract.
2. In short, Merchants purchased a mortgage loan from Sprout, the underlying borrowers subsequently tendered a full payoff of the mortgage loan to Sprout, but Sprout failed to remit the payoff to Merchants as required by the parties’ written agreement.

Parties

3. Merchants is an Indiana chartered bank with its principal place of business at 410 Monon Blvd., Carmel, Indiana 46032. Merchants’ businesses include traditional community banking operations with six depository branches located in Indiana (in Carmel, Indianapolis, Lynn, Spartanburg, and Richmond). Merchants does not have a physical presence in New York.

4. Sprout, a Delaware limited liability company, is a residential mortgage lender. Sprout’s principal place of business at 90 Merrick Avenue, Suite 500, East Meadow, New York 11554.

Jurisdiction and Venue

5. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) because this action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this Court because a Sprout's principal place of business is in this District. 28 U.S.C. § 1391(c)(2).

7. All conditions precedent to the initiation of this action have been met, performed or waived.

Factual Allegations

The Mortgage Loan Purchase Agreement

8. On or about November 30, 2021, Sprout and PRMI Trust entered into that certain Mortgage Loan Purchase Agreement (the "MLPA"), a true and accurate copy of which is attached hereto as Exhibit A.

9. On or about March 1, 2022, PRMI Trust and Merchants entered into that certain Assignment Agreement in which PRMI Trust assigned all of its rights and obligations under the MLPA to Merchants. A true and accurate copy of the Assignment Agreement is attached hereto as Exhibit B. Sprout was notified of the assignment on or about March 18, 2022.

10. Pursuant to the MLPA, from time to time Sprout would sell to Merchants all right, title and interest in and to certain residential mortgage loans.

The Mortgage Loan

11. On or about March 10, 2022, Eva C. Ganz and William E. Oldenhoff (the "Borrowers") executed a promissory note in the principal amount of \$1,215,000.00 payable to Sprout (the "Note"). A true and accurate copy of the Note is attached hereto as Exhibit C.

12. In order to secure and collateralize the Note, on or about March 10, 2022 the Borrowers executed and delivered Sprout, as Lender, and to Mortgage Electronic Registration Systems, Inc. (“MERS”), solely as nominee for Sprout and Sprout’s successors and assigns, a Deed of Trust, which was recorded on or about March 11, 2022 in the Office of the Los Angeles (California) County Recorder as Instrument No. 20220288089 (the “Deed of Trust”). A true and accurate copy of the Deed of Trust is attached hereto as Exhibit D. (The Note and the Deed of Trust may be collectively referred to as the “Mortgage Loan”).

13. On or about March 14, 2022, Sprout registered the Deed of Trust with MERS, solely as nominee for Sprout and Sprout’s successors and assigns.

Merchants’ Purchase of the Mortgage Loan

14. On April 7, 2022, Merchants purchased the Mortgage Loan from Sprout pursuant to the MLPA (the “Closing Date”).

15. Sprout and Merchants mutually agreed that the Closing Date and the Cut-off Date (defined in the MLPA) would be the same, April 7, 2022.

16. The parties’ agreed-upon Purchase Price (defined in the MLPA) for the Mortgage Loan was \$1,211,889.82.

17. Merchants paid the Purchase Price to Sprout via wire transfer on April 7, 2022 (the “MLPA Payment”).

18. Following Sprout’s receipt and acknowledgment of the MLPA Payment, Sprout assigned its right, title and interest in the Note to Merchants. A true and accurate copy of the Allonge to the Note is attached hereto as Exhibit E. Merchants currently is in possession of the original Note.

19. Following Sprout's receipt and acknowledgment of the MLPA Payment, on or about April 11, 2022 Sprout assigned its right, title and interest in the Deed of Trust to Merchants through the MERS System.

Sprout as Interim Servicer for the Mortgage Loan

20. Merchants and Sprout designated the Mortgage Loan as being a Servicing Released Mortgage Loan (defined in the MLPA).

21. Upon the Closing Date, Sprout became the Interim Servicer (defined in the MLPA) of the Mortgage Loan.

22. Section 10(b) of the MLPA required Sprout to service and administer the Mortgage Loan on behalf of Merchants in conformity with Accepted Servicing Practices (defined in the MLPA).

23. Merchants and Sprout agreed that Sprout was to act as Interim Servicer until May 1, 2022.

Sprout's Failure to Remit the Payoff and the Prepayment Penalty to Merchants

24. On or about April 28, 2022, the Borrowers tendered \$1,219,956.78 to Sprout, or an authorized agent of Sprout, for the purpose of prepaying the Mortgage Loan in full (the "Payoff").

25. Pursuant to Section 3(a) and Section 3(d) of the MLPA, Merchants is entitled to the Payoff.

26. Sprout has failed and refused to remit the Payoff to Merchants.

27. Because the Payoff occurred within ninety (90) days of the Closing Date, Section 7(d) of the MLPA required Sprout to remit a Prepayment Penalty (defined in the MLPA) to Merchants in the amount of \$15,187.50.

28. Sprout has failed and refused to remit the Prepayment Penalty owed to Merchants.

Claim for Relief: Breach of Contract

29. Merchants incorporates all of its foregoing allegations as though they were fully set forth here.

30. The MLPA between Merchants and Sprout is a valid and enforceable contract.

31. Under the MLPA, Sections 3(a) and 3(d), Merchants is entitled to all payments and proceeds collected or received after the Cut-off Date with respect to the Mortgage Loan.

32. Sprout breached the MLPA because it collected or received the Payoff after the Cut-off Date and failed to remit the Payoff to Merchants.

33. Under the MLPA, Section 7(d), Merchants is entitled to a Prepayment Penalty from Sprout.

34. Sprout has breached the MLPA because it has failed and refused to remit the Prepayment Penalty to Merchants.

35. Merchants has been damaged by Sprout's material breach of contract in the amount of \$1,235,144.28.

36. Section 12 of the MLPA requires Sprout to indemnify Merchants for its losses, including but not limited to attorney fees and litigation costs, which Merchants has incurred, and continues to incur, as a result of Sprout's breach of the MLPA and its breach of its representations and warranties in the MLPA.

Prayer for Relief

WHEREFORE, Merchants respectfully requests that the Court enter judgment in its favor and against Sprout in the amount of \$1,235,144.28, pre and post-judgment interest, attorney fees and litigation costs, and any other relief that the Court deems just and proper.

Dated: New York, New York
July 29, 2022

SEYFARTH SHAW LLP

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